



North Carolina General Assembly Senate

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August 29, 2014

Via Electronic Filing

The Honorable Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: City of Wilson, NC
Petition/FCC Docket No. 14-115

Dear Chairman Wheeler:

As a member of the North Carolina General Assembly, and a co-sponsor of the legislation in issue, I write to oppose the City of Wilson's Petition for preemption of N.C. Gen. Stat. § 160A-340, *et seq*, known as North Carolina's "Level Playing Field Law." The law itself provides important protections to the people of North Carolina that should remain in place. The FCC should deny the Petition because federal preemption in this case is wholly unwarranted, as well as unauthorized.

North Carolina's Level Playing Field Law was enacted to promote important public interests in this state—the protection of North Carolina taxpayers and the continued encouragement of a vibrant state economy. The legislation passed with strong bipartisan support, and the authority to pass the law was squarely within the North Carolina General Assembly's constitutional and statutory authority. Contrary to Wilson's assertions, municipalities can, in fact, enter and compete in the broadband market under this law. The law does nothing to thwart the goal of achieving widespread and reliable access to broadband services in North Carolina, and actually



grandfathered in cities, like Wilson, which had already undertaken enterprise efforts. The law simply set forth well-reasoned and clear parameters that apply when local units of government seek to use public resources to compete with private entities. These safeguards ensure that a municipality's investment in the provision of broadband services is done in a fiscally sound, accountable manner, and one that does not provide government bodies with unfair advantages over private market participants. Simply stated, the law is a common sense measure enacted to protect important state interests.

Federal preemption in this case would overrule the clear will of North Carolina's bipartisan legislature. To this end, Wilson's Petition is deeply troubling as the United States Congress has not authorized the FCC to preempt state law regulating the municipal provision of broadband services. The clarity of the legal authorities on this point is evident, and I share the Tennessee Legislature's concern that preemption would set an unwarranted and dangerous precedent. Wilson was represented throughout the process that preceded the law's enactment. After deliberating on the interests before it, the General Assembly made informed policy decisions that resulted in the Level Playing Field Law. To grant Wilson's request for federal intervention would allow the City to accomplish indirectly, through non-elected officials, what it could not do through the ordinary legislative process. Such a result would be at stark odds with basic and long-standing principles of federalism. I ask the FCC to decline Wilson's invitation to violate North Carolina's state sovereignty by preempting the Level Playing Field Law, and deny Wilson's Petition.

Respectfully,

A handwritten signature in black ink, appearing to read "Tom Apodaca", with a long horizontal flourish extending to the right.

Senator Tom Apodaca
Chairman of the Committee on Senate Rules and Operations